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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

PAUL DULBERG and THE PAUL DULBERG)
REVOCABLE TRUST,)

Plaintiffs,)

v.)

No. 22 L 010905

ADR SYSTEMS OF AMERICA, LLC, et al.)

Defendants.)

ORDER

Plaintiff Paul Dulberg and his co-plaintiff, The Paul Dulberg Revocable Trust, participated in a mediation conducted by defendant ADR Systems of America LLC to resolve Dulberg's personal injury claim against David Gagnon. The mediation was governed by an agreement between the parties, unbeknownst to the ADR mediator, that Gagnon would pay to Dulberg no less than \$50,000 and no more than \$300,000. The mediation occurred in the course of Dulberg's personal bankruptcy proceeding and was conducted with the approval of both the trustee of his bankruptcy estate and the presiding bankruptcy judge. The mediator's actual award to Dulberg was \$561,000, with the result that the high/low agreement between the parties produced an amount payable to Dulberg that was \$261,000 less than he would have been due in the absence of the mediation agreement's high/low limitations.

Dulberg and his trust filed suit against multiple parties in an apparent attempt to recover the difference. Among the defendants he named was ADR. The Dulberg plaintiffs claim that bankruptcy trustee Joseph Olsen presented to the bankruptcy judge a proposed ADR mediation agreement form that was not signed by any party and was modified before reaching the final form executed by the parties. Plaintiffs claim that because of the modifications from the unsigned form, the executed form could not control; that ADR breached the unsigned contract form by amending it, and that this breach caused the Dulberg plaintiffs damages "in excess of \$261,000" "because the contract under the changed terms should not be allowed to regulate the procedure."

Plaintiffs' complaint against ADR was dismissed with prejudice, and this court found plaintiffs' complaint to be subject to sanction under Supreme Court Rule 137. "The notion that they [ADR] are bound by a contract which was unsigned is untenable." (Tr. of May 25, 2023 hearing, p. 13:6-7.) The Dulberg plaintiffs have offered no legal basis for their claim that an unsigned preliminary draft of the mediation agreement imposed an obligation upon ADR to prevent changes before the execution of a final form, nor do they address the significance of the execution of that final form by all parties. Furthermore, they fail to acknowledge that the high/low agreement in the final, executed mediation contract was also present in the unsigned draft, a fact which undermines their claim that the form's modification resulted in damages clearly derived

from that high/low limitation. Asked by ADR to withdraw their claim before its validity had to be litigated, plaintiffs declined.

The Dulberg plaintiffs argue that their litigation strategy was dictated by their attorney, Alphonse Talarico, and that for his own reasons, he has attempted to sabotage their legal position. But their complaint, filed December 8, 2022, was verified by Paul Dulberg himself.

The signature of an attorney *or party* constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, *may impose upon the person who signed it, a represented party, or both, an appropriate sanction*, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee

Illinois Supreme Court Rule 137 [emphasis added]. "Rule 137, as did its predecessor section 2-611, imposes on both client and counsel the duty to make reasonable inquiry into the facts to support a legal claim or defense before pleadings and other legal papers are filed with the court." *Edwards v. Estate of Harrison*, 235 Ill. App. 3d 213, 220 (1992). "Pleadings and other papers filed in violation of Rule 137 may subject the party, the party's attorney, or both, to an appropriate sanction. That sanction may include an order to pay the other party's attorney fees and costs." *Lewy v. Koeckritz Int'l, Inc.*, 211 Ill. App. 3d 330, 334 (1991). Paul Dulberg's verification of his complaint obliged him to make an independent investigation of the legitimacy of its allegations. If at any time he believed that his attorney's approach was unjustified, it was his duty to take steps to undo what had been done. No timely effort to do so is apparent from the record.

The court accordingly adheres to its earlier conclusion that Rule 137 sanctions against plaintiffs and their attorney, Alphonse Talarico, are warranted for their complaint against ADR. Now before the court is ADR's fee petition. After review of the petition and of the steps ADR was forced to take to achieve dismissal of the complaint against it, the court finds the petition to be reasonable.

Accordingly, the court hereby awards to ADR Systems of America LLC attorneys' fees of \$25,092.50 and costs of \$551.25, for a total of \$25,643.75 against Paul Dulberg, The Paul Dulberg Revocable Trust, and Alphonse Talarico, jointly and severally.

Judge Anthony C. Swanagan

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